

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Criminal No. 2006-01
v.	)	
	)	
ROBERT PINNEY,	)	
	)	
Defendant.	)	
_____	)	

**Attorneys:**

**Delia Smith, AUSA**  
St. Thomas, U.S.V.I.  
*For the plaintiff,*

**Martial Webster, Esq.**  
St. Croix, U.S.V.I.  
*For the defendant.*

**MEMORANDUM OPINION**

Before the Court is defendant Robert Pinney's ("Pinney") motion to suppress all physical evidence seized during a search of his home. This is Pinney's second motion to suppress. His first motion was heard on July 26, 2006. In that motion, Pinney sought suppression of all statements, noting he was not read his *Miranda* rights though he was interrogated in custody. The Court granted the motion with regard to the statements. Pinney also sought suppression of all physical evidence obtained by law

enforcement, arguing that they were the fruit on an unlawful search. The Court denied the motion with regard to the physical evidence, finding that he freely consented to the search. In the instant motion, Pinney now argues that the physical evidence is the result of an unlawful seizure of him.

**I. FACTS**<sup>1</sup>

On December 7, 2005, in an attempt to locate Pinney's cousin, Wayne Bruce Serieux ("Serieux"), DEA/HIDTA Agents Michael Goldfinger, Eric Lee, and Darnell Blake went to Pinney's place of employment, K-Mart, to ask Pinney about Serieux's whereabouts. The agents had obtained Serieux's cell phone records which indicated communication between Serieux's and Pinney's cell phones on November 29, 2005, and December 2, 4, 5, 6, and 7, 2005.

When questioned by the agents at K-Mart, Pinney stated he had not seen Serieux for months and had last been in contact with him minimally weeks ago. Pinney denied any knowledge of Serieux's whereabouts. The agents informed Pinney they had evidence of toll records to indicate Pinney's answers regarding his contact with

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<sup>1</sup> Many of the Court's findings in this section are based on evidence from the suppression hearing on July 26, 2006. A more detailed factual background can be found in this Court's memorandum opinion dated July 28, 2006. *United States v. Pinney*, No. 2006-CR-01, slip op. (D.V.I. July 28, 2006). Other facts are based on Agent Goldfinger's testimony on November 1, 2006.

Serieux were false. The agents told Pinney they had evidence of phone calls on many occasions between November 29, 2005, and December 7, 2005. The agents also advised Pinney that making false statements to federal agents regarding the whereabouts of a fugitive is a crime.

On December 8, 2005, the agents approached Pinney again and questioned him about Serieux's whereabouts. Pinney continued to deny having telephonic contact with Serieux. The agents informed Pinney again that their records indicated Pinney had been in contact with Serieux. Pinney stated he had not spoken to Serieux, that he had not seen Serieux and did not know of his whereabouts.

The agents then reminded Pinney of the telephone records they had obtained. Pinney then indicated he had recently obtained Serieux's cell phone. Pinney was unable to indicate how he obtained the phone. Pinney also indicated he gave Serieux's cell phone to someone named Johnny but he could not tell the agents who Johnny was, where Johnny was, why he had given the phone to Johnny or under what circumstances Pinney had obtained the phone back from Johnny. The agents then telephoned Assistant United States Attorney Delia Smith ("Smith") to advise her of the situation. Smith agreed that the agents had probable cause to arrest Pinney for making false statements. The agents then handcuffed Pinney and placed him under arrest for making false

statements in violation of title 18, section 1001 of the United States Code.

After his arrest, Pinney gave consent to the agents to search his bedroom at his home. On January 10, 2006, the grand jury charged Pinney with seventeen counts related to weapons and drugs found in Pinney's bedroom, as well as the charge of making false statements.

Pinney argues the agents violated his Fourth Amendment rights by arresting him without a warrant or probable cause. Thus he seeks suppression of all evidence seized by the agents from his home that took place after the arrest arguing they are the fruits of an illegal arrest.

## **II. DISCUSSION**

This Court has already held one suppression hearing in this matter. The narrow issue before the Court is whether the physical evidence should be suppressed as the fruit of an unlawful seizure. As conceded by defense counsel at the November 1, 2006, hearing, based on this Court's prior determinations, if the Court finds probable cause for the arrest, then the subsequent search was not unlawful.

The Fourth Amendment protects citizens "against unreasonable searches and seizures." U.S. Const., amend. IV.<sup>2</sup> Arrests are considered seizures of persons. See *Dunaway v. New York*, 442 U.S. 200, 207 (1979). An arrest occurs "whenever a police officer accosts an individual and restrains his freedom to walk away." *Terry v. Ohio*, 392 U.S. 1, 16 (1968). The Supreme Court has distinguished between seizures where an officer restrains an individual's freedom for an extended period and quick "stop and frisks" that do not result in a significant restraint on freedom. *Id.* Where a stop is not brief, such as where an individual is handcuffed, led to a police car, then taken to a police station, an arrest has been effected. *Dunaway*, 442 U.S. at 212.

Warrantless searches and seizures are considered per se unreasonable unless they fall under one of a few specialized exceptions. See *Horton v. California*, 496 U.S. 128, 133 & n.4 (1990). Where the seizure is done without a warrant, the government has the burden of proving that the seizure falls into one of these exceptions. *United States v. Herrold*, 962 F.2d 1131, 1137 (3d Cir. 1992).

"The general rule in a criminal proceeding is that statements and other evidence obtained as a result of an

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<sup>2</sup> The Fourth Amendment has been extended to the United States Virgin Islands by section 3 of the Revised Organic Act of 1954, 48 U.S.C. § 1561, entitled "Bill of Rights."

unlawful, warrantless arrest are suppressible if the link between the evidence and the unlawful conduct is not too attenuated." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040-41 (1984) (citing *Wong Sun v. United States*, 371 U.S. 471 (1963)). An arrest by a law enforcement officer without a warrant "is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed." *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). Absent probable cause, evidence obtained from an arrest cannot be used at trial to prove the defendant's guilt. See *Stone v. Powell*, 428 U.S. 465, 482-89 (1976) (describing development of the exclusionary rule, which proscribes courts from using evidence obtained from illegal searches and seizures in criminal trials); see also *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (incorporating exclusionary rule to state proceedings).

Probable cause is determined by viewing the totality of the circumstances to see whether, at the moment of the arrest, "the facts and circumstances within [the police officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." *Beck v. Ohio*, 379 U.S. 89, 91 (1964); see also *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949) (holding that probable cause exists

where the facts and circumstances as they exist at the time of arrest support a finding that a crime has been or is being committed); *Thacker v. City of Columbus*, 328 F.3d 244, 256 (6th Cir. 2003) (noting that arresting officers do not need proof of each element of the offense, but do need to believe that the defendant probably committed the offense).

Even when the officers could have obtained an arrest warrant, it is not necessary if the officers have probable cause. See *United States v. Watson*, 423 U.S. 411, 423-24 (1976) (noting the judicial preference for warrants but "declin[ing] to transform this judicial preference into a constitutional rule when the judgment of the Nation and Congress has for so long been to authorize warrantless public arrests on probable cause rather than to encumber criminal prosecutions with endless litigation with respect to the existence of exigent circumstances, whether it was practicable to get a warrant, whether the suspect was about to flee, and the like.").

### **III. ANALYSIS**

The agents asked Pinney if he had been in contact with Serieux or knew of Serieux's whereabouts. Pinney denied any recent contact with Serieux. The agents had telephonic records to indicate that there was telephonic communication between Serieux's and Pinney's cell phones. Those toll records and

Pinney's possession of Serieux's cell phone indicate contact and communication with Serieux in direct contradiction of Pinney's claims. Under those circumstances, the agents did have probable cause to believe Pinney had uttered a false statement.

### III. CONCLUSION

Accordingly, the physical evidence seized from Pinney's apartment will not be suppressed because the seizure of Pinney was not unlawful. An appropriate order follows.

DATED: November 27, 2006

FOR THE COURT:

\_\_\_\_\_/s/  
Curtis V. Gómez  
Chief Judge

ATTEST:

WILFREDO MORALES  
Clerk of the Court

By: \_\_\_\_\_/s/  
Deputy Clerk

Copies to:

Hon. Geoffrey W. Barnard  
Delia Smith, AUSA  
Martial Webster, Esq.  
Carol C. Jackson  
Olga Schneider  
Lydia Trotman  
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*For the plaintiff,*

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*For the defendant.*

**ORDER**

Before the Court is defendant Robert Pinney's ("Pinney") motion to suppress. For the reasons given in the accompanying memorandum of even date, it is hereby

**ORDERED** that Pinney's motion to suppress all physical evidence obtained is **DENIED**.

DATED: November 27, 2006

FOR THE COURT:

\_\_\_\_\_/s/  
Curtis V. Gómez  
Chief Judge

ATTEST:

WILFREDO MORALES  
Clerk of the Court

By: /s/  
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